

GREATER SHEPPARTON CITY COUNCIL
SALE AND
ACQUISITION OF
LAND POLICY



TITLE

Code:	X.X
Version:	1.1
Business Unit:	Infrastructure
Responsible Officer:	Manager Strategic Assets
Approved By:	Chief Executive Officer
Adopted By:	Council Day Month Year
Next Review:	Day Month Year

DOCUMENT REVISIONS

Version #	Summary of Changes	Date Adopted
1.1		

PURPOSE

The purpose of this Policy is:

- *to ensure that Council has a consistent, equitable and transparent process in relation to the sale and acquisition of land.*
- *Complies with best practice and legislative requirements when undertaking the sale or acquisition of land.*
- *Strategically manages its property portfolio for the long term best interests of the community.*
- *Achieves best value (both financial and non-financial in all of its land dealings).*

OBJECTIVE

The objective of this policy is to ensure that all Council owned land is sold and purchased in a considered and responsible manner and in accordance with the Local Government Act 2020.

SCOPE

This policy applies to all Council land held in freehold title or vested in Council. This Policy does not apply to:

- *Roads, rights of way, reserves, revenge strips, and private roads.*
- *The creation, alteration and extinguishment of easements*
- *Land sold by Council for the non-payment of rates.*

POLICY

Council land needs to respond to and provide for the diverse and evolving needs of the Council and its community both now and into the future. This includes the opportunity to sell surplus Council land or purchase of new Council land.

1.1 Definitions

'acquisition' or **'acquire'** means the process of gaining ownership or control of land, or an interest in land, through purchase, vesting, transfer or exchange.

'Best Practice Guidelines' means Local Government Best Practice Guideline For Sale / Exchange of Land June 2009 prepared jointly by Local Government Victoria and the Government Land Monitor and the Department of Planning and Community Development. The Guidelines provide guidance to Council on the sale, exchange or transfer of Council land and should be followed.

'Council' means the Greater Shepparton City Council.

'Council Land' means Council owned or vested land, excluding where Council is the Committee of Management of Crown land.

'Council Plan' means Council Plan 2021-2025.

“**Crown land**” means land owned by the Crown (Victorian State) which may be unalienated or reserved. Reserved Crown land means Crown land set aside from sale for a specific (public) purpose by an Act of Parliament.

“**Delegate**” means a member of the Council staff occupying a position to which the powers, duties and functions of the Council to negotiate and execute the necessary documents to implement resolutions of Council to acquire or sell land have been delegated or sub-delegated.

“**EOI**” means an expression of interest. It is the method of sale to identify parties who may be interested in, and capable of, delivering an outcome on a parcel of land. The purpose of an expression of interest method of sale is to determine whether the market has an interest in developing or purchasing a particular parcel of land. Expressions of interest are usually not binding on either party.

“**LGA**” means the Local Government Act 2020 as amended from time to time.

“**Valuer**” means:

a) a person appointed by Council who holds the qualifications or experience specified under section 13DA(2) of the *Valuation of Land Act 1960* and is certified or accredited by the Australian Property Institute; and

b) for the purposes of a valuation relating to the sale or acquisition of land, a valuer having not less than 5 years’ experience in valuing real property.

“**Valuation**” means an established, ethical and evidence based process for assessing the monetary value of real property at a specified date undertaken by a qualified, professional Valuer. A valuation must be certified by a Valuer and be based on appropriate methodology.

1.2 Legislative Context

Council has obligations under a range of legislation in relation to the sale and acquisition of land, including:

- *LGA*
- *Valuation of Land Act 1960*
- *Transfer of Land Act 1958*
- *Subdivision Act 1988*
- *Planning and Environment Act 1987*
- *Land Acquisition and Compensation Act 1986*

1.3 Policy - Sale of Land

1.3.1 Sale of Land Principles

Council under Sections 112 of the LGA is able to acquire, hold, deal with or dispose of property (including land) for the purposes of performing its function and exercising its powers. Council must comply with legislative obligations for all sales of land and should:

- Not sell Council Land at a price which is less than the current market value assessed by a Valuer, unless Council can justify the circumstances to sell the land at less than market value.
- Ensure Council Land is appropriately zoned prior to being offered for sale. This will ensure that the highest value and best use of the land is determined by that zone and the highest possible sale price is achieved.

- Ensure that the sale of Council Land is in the best interests of the community and provides the best result (both financial and non-financial) for Council and its community.

1.3.2 Retention of Land Principles

The sale of Council Land is a significant decision. It is a policy of Council that all Council Land is to be retained except where the Council Land meets all of the following principles:

- Does not or will not support, facilitate or contribute to current or future service delivery outcomes as identified in the Council Plan.
- Has a net realisable value for another purpose which is significantly greater than the cost of re-establishing the service on another site.
- If sold will facilitate and/or promote investment and positive economic development outcomes.
- Does not contribute economic, environmental or community benefit to the municipality to justify its retention.
- Has no strategic significance to Council on a long term basis.
- Is identified in a Council adopted strategy, budget, study, policy or planning scheme as being surplus to its requirements or not required to be owned by Council.
- The land is held for resale purposes.

1.3.3 Considerations Prior to the Sale of Land

To ascertain whether or not Council Land meets the principles for retention or may be suitable for sale, a property land assessment will be carried out. The assessment must consider the following:

- the seven retention principles outlined in clause 1.3.2 above
- service, economic and strategic needs and uses
- no net loss of public open space
- legal issues including title details, verifying ownership and how the land was purchased by Council
- survey issues including land boundaries
- planning and zoning requirements
- environmental considerations including contamination
- conservation values including historical, cultural, heritage and Native Title considerations
- site constraints and opportunities
- building asset condition and maintenance considerations
- risk considerations
- financial considerations
- preferred method of sale
- long term lease options.

1.3.4 Council Resolution

Where the land assessment has been undertaken and it is determined that the Council Land is not required for retention, then that land can be set aside for proposed sale. A Council resolution is required for specific approval to commence the statutory process to affect the sale of Council Land.

1.3.5 Method of Sale

The sale of any Council land should be conducted through a public process, i.e. auction/ tender (open or selected) or EOI unless circumstances warrant proceeding directly to sale by private treaty.

(1) Auction/Tender

A licensed real estate agent must conduct the sale of Council Land by public auction or tender. The reserve price for the sale of Council Land by public auction or tender must be set prior to the day of auction or close of tender and must not be less than the current market value of the Council Land as determined by a Valuer. If the reserve price is not met at auction or close of tender, the real estate agent may negotiate with the highest bidder in an attempt to meet the reserve price. If negotiation with the highest bidder fails to meet the reserve price, the Council Land may remain on the market and sold by private treaty. In the case of sale by auction/tender, the public notice of the proposed sale must be given prior to the auction/tender.

(2) Expression of Interest

An EOI method of sale may also be appropriate in the following (but not limited to) circumstances:

- For the sale of large or strategically located Council Land which has significant development potential or significant development barriers.
- Where, in addition to selling the land, Council wishes to control the future use or development of the land.
- Where Council is seeking to expose the land to the market to determine potential development options.
- Where Council is seeking to achieve a specific development outcome or policy objective in relation to the sale of the land.

Prior to the sale of Council Land which is undertaken by an EOI, Council must obtain the current market value of the Council Land as determined by a Valuer. Council may appoint a licensed real estate agent to conduct the EOI campaign. For large or complex transactions, Council should also engage a probity auditor to provide independent assurance that the EOI process is appropriate and is completed satisfactorily.

In the case of sale by EOI, the public notice of the proposed sale will generally occur after the EOI has identified the preferred purchaser.

(3) Private Treaty

There may be circumstances where it may be more appropriate to sell land by private treaty – which will depend on:

- The nature of the land that is proposed for sale.
- How the proposed sale is initiated.
- Previous unsuccessful public methods of sale (if applicable).

Council should provide the reasons to the community why the private treaty method is the preferred method of sale. Where Council Land is sold by private treaty, depending on the nature and value of the land, how the sale was initiated and the future use/development of the land – it may also be necessary to appoint a probity auditor to oversee the probity of the transaction.

The sale price of Council Land sold by private treaty should not be less than the market value as determined by Council's valuer, unless a price below market value is supported by Council's valuer and Council's Delegate having regard to prevailing market conditions and any other relevant considerations at the time of sale.

1.3.6 Statutory Requirements

All sales and exchanges of Council Land must comply with the provisions of the LGA and should comply with the Best Practice Guidelines.

For all sales of land, Council must:

- Sell land in accordance with the requirements set out in section 114 of the LGA, which includes:
 - At least 4 weeks prior to selling or exchanging the land, Council must publish notice of intention to do so.
 - (i) on the Council's internet site; and
 - (ii) in any other manner prescribed by the regulations; and
 - undertake a community engagement process in accordance with its community engagement policy; and
 - obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the Valuation of Land Act 1960 a valuation of the land which is made not more than 6 months prior to the sale or exchange. If the property is valued over \$500,000 then obtain a second valuation.

1.3.7 Sale of Land Proceeds

The disposal proceeds from Council Land sales should be dispersed in accordance with Council's adopted annual budget, and Council's adopted long term financial plan.

The land has no long term strategic significance or application to Council, as identifiable in the Council Plan or other related strategic documents.

Consideration should be given to whether the sale of land achieves any of the following principles. The sale:

- Will facilitate and/or promote investment and positive economic development outcomes.
- Has a net realisable value for another purpose which is significantly greater than either the cost of moving a resident service to another location, or any potential future use of the land by Council.
- Is of land identified by Council as being surplus to its needs.
- Will provide benefits to the community either directly or indirectly

1.4 Policy - Acquisition of Land

1.4.1 Acquisition of Land Assessment Review

Council may acquire land or compulsorily acquire land for the performance of its functions or the exercise of its powers under section 112 of the LGA.

Council must ensure that where a land acquisition is proposed it can be demonstrated that it is a required asset to support or facilitate the delivery of a service to its community. The acquisition of any land will be considered by Council on its merits, however, the potential acquisition needs to be identified taking into consideration the purpose for which the land needs to be acquired, the strategic nature of such land and the value that such land has to the Council's community.

To determine whether the land meets the strategic justification for Council ownership, a land assessment review will be undertaken to gain sufficient information on the manner and extent to which the proposed land contributes to Council's strategic initiatives. This land assessment review should consider:

- service, economic and strategic needs and uses
- legal issues including title details and verifying ownership
- survey issues including land boundaries
- planning and zoning requirements
- environmental considerations including contamination
- conservation values including historical, cultural, heritage and Native Title considerations
- site constraints and opportunities
- building asset condition and maintenance considerations
- risk considerations
- financial considerations and value
- Council Strategies/Polices (e.g. Open Space Strategy).

Where a land assessment review has been completed and it has been determined that the land should be acquired, Council should consider how to fund the proposed acquisition. Where a land assessment review has been completed and it has been determined that the land should not be acquired, the outcome of the review should be reported to councillors, so as to ensure visibility over all properties considered including all land offered up through the 'Victorian Government landholding policy-first right of refusal' process.

1.4.2 Method of Acquisition

Land may be acquired by Council via a public process (i.e. auction), by private negotiation/treaty or by compulsory acquisition.

1.4.3 Valuation

When seeking to acquire land, Council must obtain a Valuation from a Valuer to determine the market value of the land. If the market value of the land to be acquired is \$500,000 or greater, Council must obtain two valuations.

Generally, Council should not acquire land at a price which is greater than the current market value as assessed by a Valuer, unless Council can provide the circumstances, reasons or factors which led to the decision to recommend offering a purchase price that is more than market value, or where such purchase price is supported by Council's Valuer and Council's Delegate.

Where the acquisition of land is strategically important but the compulsory acquisition process is not used, or available, Council may consider a higher purchase price is warranted given the circumstances.

1.4.4 Statutory Requirements

All acquisitions of land must comply with the provisions of the LGA, the Land Acquisition and Compensation Act 1986 (LACA), the Planning and Environment Act 1987 and the Best Practice Guidelines.

Victorian Government Landholding Policy and Guidelines – First Right of Refusal

Pursuant to the Victorian Government's Landholding Policy, upon declaring land surplus to agency requirements, the Department of Environment, Land Water and Planning will give notice to Victorian government agencies, local government and the Commonwealth Government of any surplus land (First Right of Refusal). This First Right of Refusal process provides municipalities in which surplus land is located the opportunity to express an interest to acquire the land for public or community purposes.

All government agencies have 60 days from the date of notification in which to submit an expression of interest to acquire the surplus government land. If an expression of interest is received, the parties are required to negotiate in good faith to attempt to agree on the terms of sale. The landholding Minister may approve the sale of land for a community purpose at a price less than market value of the land as determined by the Valuer-General Victoria.

Council regularly receives updates to the First Right of Refusal land register from the Department of Treasury and Finance. Any surplus government land identified within the municipality will be assessed against the criteria outlined in 2.7.1 of this

Policy to determine whether Council should submit an expression of interest to acquire the surplus government land.

LACA

Council may compulsorily acquire land or Council Land may be compulsorily acquired by an acquiring authority. The acquisition may be by agreement or by a compulsory process.

Council has the legal power to compulsorily acquire land under the LGA and is required to comply with the LACA when acquiring land whether or not the acquisition is by agreement or by a compulsory process. In these circumstances, Part 2 of the LACA describes the procedural requirements for such acquisition.

Where the compulsory acquisition of land becomes known as a disputed claim under the LACA the matter may be referred to Victorian Civil and Administrative Tribunal or the Supreme Court of Victoria for determination.

Planning and Environment Act 1987

Council may also be liable for compensation under the Planning and Environment Act 1987 where a loss is made by the owner of land, where the land is sold as a result of the imposition of a public acquisition overlay (loss on sale) or where a planning application is refused on grounds that the land is required for a public purpose (financial loss). The owner is responsible for making a claim for compensation, to which Council has to respond.

2. RELATED POLICIES AND PROCEDURE

- *Nil.*

3. RELATED LEGISLATION

- *Local Government Act 2020*
- *Valuation of Land Act 1960*
- *Transfer of Land Act 1958*
- *Subdivision Act 1988*
- *Planning and Environment Act 1987*
- *Land Acquisition and Compensation Act 1986.*

4. REVIEW

The Manager Strategic Assets will review this Policy every four years as necessary, or as required due to changes in related policies, procedures or legislation.

Peter Harriott

Chief Executive Officer

Date

ATTACHMENTS

Nil.